

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

H. LEIGHTON LASKEY,	)	
	)	
Plaintiff,	)	
	)	
v.	)	C.A. No. 06-018-JJF
	)	
PFC. ROBERT C. LEGATES,	)	
PFC. WHEATLEY and JOHN DOE,	)	
Supervisor on duty at	)	
Millsboro Police Department,	)	
	)	
Defendants.	)	

**DEFENDANTS' MOTION TO DISMISS PLAINTIFF'S "AMENDMENT"**  
**AND "AMENDED COMPLAINT" AND MEMORANDUM OF POINTS AND**  
**AUTHORITIES IN SUPPORT THEREOF**

Pursuant to F.R.C.P. 12(b)(6), defendants move to dismiss plaintiff's "Amendment" and "Amended Complaint" for failure to state a claim upon which relief can be granted. The grounds for defendants' Motion are as follows:

1. Notwithstanding plaintiff's proposed July 26, 2006 "Amendment" (Exhibit A attached hereto) and July 29, 2006 "Amended Complaint" (Exhibit B attached hereto), the gist of his claim remains that defendant Town of Millsboro Police Officers did "involuntarily take evidence from plaintiff" (Exhibit B) by using force to take a blood sample after plaintiff had been arrested under suspicion of driving under the influence of alcohol. According to plaintiff, the officers' use of force was unreasonable because his "refusal was allowed under law." (Exhibit B).

2. Plaintiff's claim is still based solely on his allegation that force was used to draw blood against his will. Police officers are permitted to use force in taking a blood sample from a suspected drunk driver. Schmerber v. California, 384 U.S. 757, 760 (1966); McCann v. State of Delaware, 588 A.2d 1100, 1101-02 (Del. Supr. 1991). Moreover, plaintiff's Amended Complaint does not allege that the officer informed plaintiff of the penalty of license revocation for refusal to permit chemical testing. See McCann at 1102 (In the absence of a statement by the officer regarding the penalty for refusal force may be used to take a blood sample from a suspected drunk driver).

**WHEREFORE**, defendants requests that plaintiff's Complaint be dismissed with prejudice for failure to state a claim upon which relief can be granted.

**AKIN & HERRON, P.A.**

/s/ Bruce C. Herron  
Bruce C. Herron  
Attorney I.D. No.: 2315  
1220 N. Market Street  
Suite 300  
P.O. Box 25047  
Wilmington, DE 19899  
(302) 427-6987  
Attorney for Defendants

Dated: August 2, 2006

HONORABLE JUDGE  
JOSEPH J. FARNAN JR.  
U.S.DISTRICT COURT  
844 N.KING STREET  
WILMINGTON,DELAWARE  
19801

CASE#06-018-JJF

AMENDMENT

1. ENTER THE TOWN OF MILLSBORO AS DEFENDANTS:

VIOLATION OF RIGHTS, ASSAULT: THAT THE TOWN OF MILLSBORO HAS  
COMMON POLICY THAT DIRECTS THE MILLSBORO POLICE DEPARTMENT  
TO USE UNREASONABLE AND EXCESSIVE FORCE TO OBTAIN EVIDENCE.

2. ENTER THE MILLSBORO POLICE DEPARTMENT AS DEFENDANTS: VIOLATION OF RIGHTS  
ASSAULT  
THAT THE MILLSBORO POLICE DEPARTMENT DIRECTS POLICE TO  
VIOLATE CIVIL LAW AND USE UNREASONABLE AND EXCESSIVE FORCE  
TO OBTAIN EVIDENCE.

CONCLUSION

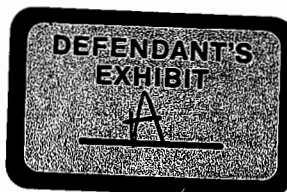
OFFICER WYATLEY, OFFICER LEGATES UNDER

DIRECTION OF COMMON POLICY DID USE UNREASONABLE AND  
EXCESSIVE FORCE TO OBTAIN EVIDENCE ON JANUARY 3 2004 AGAINST  
THE PLAINTIFF H. LEIGHTON LASKEY.

RESPECTFULLY,

*H. Leighton Laskey*  
H. LEIGHTON LASKEY  
527 BALTIC AVE  
BROOKLYN, MD. 21225

cc. BRUCE HERRON



J. H. Lighter forky db

attest that I have sent a copy of an  
unmarked complaint to Bruce C. Henrich  
defense attorney at 1220 N. MARKET ST  
SUITE 300 P.O. BOX 25047 WILMINGTON  
DELAWARE 19899 on 7-26-06.

J. H. Lighter forky  
527 BARTIC AVE  
BROOKLYN, MI 48125

HONORABLE JUDGE  
JOSEPH J.FARNAN  
U.S.DISTRICT CT  
844 N.KING STREET  
WILMINGTON,DE.19801

CASE#06-018-JJF  
7-29-2006

AMENDED  
COMPLAINT

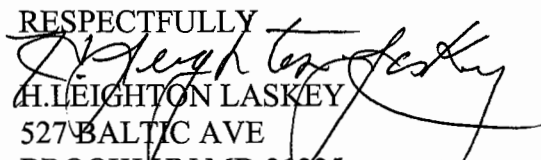
1)ENTER THE MILLSBORO POLICE DEPARTMENT 107 MAIN STREET  
MILLSBORO,DELAWARE.19966 AS DEFENDANTS. ASSAULT, DENIAL OF RIGHTS  
2)ENTER THE TOWN OF MILLSBORO 322 WILSON HWY.MILLSBORO  
DELAWARE AS DEFENDANTS. ASSAULT, DENIAL OF RIGHTS

THAT ON JANUARY 3,2004  
UNDER COMMON POLICY AND OR LACK OF PROPER POLICE TRAINING  
OFFICER LEGATES AND OFFICER WHEATLEY DID PHYSICALLY ASSAULT  
AND INVOLUNTARILY TAKE EVIDENCE FROM PLAINTIFF H.LEIGHTON  
LASKEY AT BEEBE HOSPITAL. THAT PLAINTIFFS REFUSAL WAS ALLOWED  
UNDER LAW AND WAS IGNORED BY POLICE.EMOTIONAL AND PHYSICAL  
INJURIES DID RESULT.

FURTHERMORE PLEASE  
EXCUSE AMENDMENT DATED 7-26-06 FOR BEING INCOMPLETE.

I H.LEIGHTON LASKEY DO  
ATTEST THAT A COPY WAS SENT TO THE DEFENDANTS ATTORNEY AT  
1220 N.MARKET ST.P.O.BOX25047 WILMINGTON, DELAWARE 19899

RESPECTFULLY

  
H.LEIGHTON LASKEY  
527 BALTIMORE AVE  
BROOKLYN,MD.21225

